

MAR 04 2013

Board of Vocational Nursing
and Psychiatric Technicians

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General
WILLIAM D. GARDNER
Deputy Attorney General
State Bar No. 244817
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2540
Facsimile: (213) 897-2804

Attorneys for Complainant

**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:
BRIAN ROSALES GUMBEL
a.k.a. BRIAN JOSEPH ROSALES
GUMBEL
a.k.a. BRIAN JOSEPH GUMBEL, JR.
a.k.a. BRIAN JOSEPH ROS GUMBEL
9304 Los Angeles Street
Bellflower, CA 90706

Case No. VN-2010-2044

A C C U S A T I O N

Vocational Nurse License No. VN 233831

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing & Psychiatric Technicians.

2. On or about April 21, 2008, the Board of Vocational Nursing and Psychiatric Technicians (Board) issued Vocational Nurse License No. VN 233831 to Brian Rosales Gumbel, also known as Brian Josephrosales Gumbel, Brian Joseph Gumbel, Jr., and Brian Josephros Gumbel (Respondent). The Vocational Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2014, unless renewed.

1 **JURISDICTION**

2 3. This Accusation is brought before the Board, under the authority of the following
3 laws. All section references are to the Business and Professions Code unless otherwise indicated.

4 **STATUTORY PROVISIONS**

5 4. Section 118, subdivision (b) provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period
7 within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1,
8 the Board may renew an expired license at any time within four years after the expiration.

9 5. Section 490 states, in pertinent part:

10 "(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

14 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
15 discipline a licensee for conviction of a crime that is independent of the authority granted under
16 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
17 of the business or profession for which the licensee's license was issued.

18 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
19 conviction following a plea of nolo contendere. Any action that a board is permitted to take
20 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
21 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence, irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code...."

24 6. Section 2878 states, in pertinent part:

25 "The board may suspend or revoke a license issued under this chapter [the Vocational
26 Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.) for any of the following:

27 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

28

1 “(f) Conviction of a crime substantially related to the qualifications, functions, and duties
2 of a licensed vocational nurse, in which event the record of the conviction shall be conclusive
3 evidence of the conviction....”

4 7. Section 2878.5 states, in pertinent part:

5 “In addition to other acts constituting unprofessional conduct within the meaning of this
6 chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the
7 following:

8

9 “(b) Use any controlled substance as defined in Division 10 of the Health and Safety
10 Code, or any dangerous drug as defined in Section 4022, or alcoholic beverages, to an extent or in
11 a manner dangerous or injurious to himself or herself, any other person, or the public, or to the
12 extent that the use impairs his or her ability to conduct with safety to the public the practice
13 authorized by his or her license.

14 “(c) Be convicted of a criminal offense involving possession of any narcotic or dangerous
15 drug, or the prescription, consumption, or self-administration of any of the substances described
16 in subdivisions (a) and (b) of this section, in which event the record of the conviction is
17 conclusive evidence thereof....”

18 **REGULATORY PROVISIONS**

19 8. California Code of Regulations, title 16, section 2518.6 states, in pertinent part:

20

21 “(b) A licensed vocational nurse shall adhere to standards of the profession and shall
22 incorporate ethical and behavioral standards of professional practice which include but are not
23 limited to the following:

24

25 “(4) Abstaining from chemical/substance abuse....”

26
27 9. California Code of Regulations, title 16, section 2521 states, in pertinent part:

28 “For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5

1 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be
2 considered substantially related to the qualifications, functions, or duties of a licensed vocational
3 nurse if to a substantial degree it evidences present or potential unfitness of a licensed vocational
4 nurse to perform the functions authorized by his license in a manner consistent with the public
5 health, safety, or welfare.”

6 **COST RECOVERY**

7 10. Section 125.3 states, in pertinent part, that the Board may request the administrative
8 law judge to direct a licentiate found to have committed a violation or violations of the licensing
9 act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the
10 case.

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Conviction of a Substantially Related Crime)**

13 11. Respondent is subject to disciplinary action under section 2878, subdivisions (a) and
14 (f), and 490, in conjunction with California Code of Regulations, title 16, section 2521, in that
15 Respondent has been convicted of crimes substantially related to the qualifications, functions, or
16 duties of a licensed vocational nurse, as follows:

17 a. On or about July 28, 2011, after pleading nolo contendere, Respondent was convicted
18 of one misdemeanor count of violating Vehicle Code section 23152(b) [driving with blood
19 alcohol of 0.08% or more] and Vehicle Code section 14601.2(a) [driving with a suspended
20 license] in the criminal proceedings entitled *The People of the State of California v. Brian*
21 *Josephrosale Gumbel*. (Super. Ct. Los Angeles County, 2011, No. 1BF02435). The Court
22 sentenced Respondent to 60 days jail, placed Respondent on 48 months probation, and ordered
23 Respondent to enroll in 18-month Second-Offender Program.

24 b. The circumstances surrounding the conviction are on or about April 21, 2011,
25 Respondent was contacted by California Highway Patrol, CHP, for driving at a high rate of
26 speed. When asked why he was driving so fast, Respondent replied that he “was late for work.”
27 While speaking to Respondent, the CHP officer detected an odor of an alcoholic beverage
28 emitting from his breath and person. Respondent’s eyes were observed to be red and glassy. The

1 officer asked Respondent if he had consumed any alcoholic beverages. Respondent replied that he
2 had not. Respondent was subsequently arrested for driving while under the influence. During the
3 booking procedure, Respondent submitted to a breath test that resulted in breath-alcohol content
4 of level of 0.144% and 0.151%.

5 c. On or about March 3, 2011, after pleading guilty, Respondent was convicted of one
6 misdemeanor count of violating Vehicle Code section 23152(b)[driving with blood alcohol of
7 0.08% or more] in the criminal proceedings entitled *The People of the State of California v. Brian*
8 *Joseph Gumbel, Jr.* (Super. Ct. Orange County, 2010, No. 10NM15535). The Court placed
9 Respondent on three years probation and ordered Respondent to complete a nine-month First
10 Offender Alcohol Program.

11 d. The circumstances surrounding the conviction are that on or about November 5, 2010,
12 Respondent was stopped by the Fullerton Police Department after officers observed him driving
13 erratically. While speaking to Respondent, the officer detected an odor of an alcoholic beverage
14 emitting from his breath and person and observed Respondent's speech to be slurred. Upon
15 exiting his vehicle, Respondent struck his head on the driver's door and lost his balance.
16 Respondent's passenger admitted to the officers that they had been drinking together earlier in the
17 night. Respondent was subsequently arrested for driving while under the influence. During the
18 booking procedure, Respondent submitted to a breath test that resulted in breath-alcohol content
19 of level of 0.21% on the first and second readings.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Illegal Use of Drugs/ Alcohol Posing Danger to Public & Impair Practice)**

22 12. Respondent is subject to disciplinary action under section 2878.5, subdivision (b), in
23 that Respondent consumed alcohol in manner that was dangerous to himself and others.
24 Complainant refers to, and by this reference incorporates, the allegations set forth above in
25 paragraph 11, subparagraphs a through d, as though set forth fully.

26 ///

27 ///

28 ///

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

13. Respondent is subject to disciplinary action under section 2878.5, subdivision (c), in that Respondent committed acts which constitute unprofessional conduct. Complainant refers to, and by this reference incorporates, the allegations set forth above in paragraph 11, subparagraphs a through d, as though set forth fully.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking or suspending Vocational Nurse License No. VN 233831, issued to Brian Rosales Gumbel;

2. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to section 125.3; and

3. Taking such other and further action as deemed necessary and proper.

DATED: _____

MAR 04 2013



TERESA BELLO-JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing & Psychiatric Technicians
State of California
Complainant

LA2012506323